

**DISTRICT OF COLUMBIA**  
**DOH Office of Adjudication and Hearings**  
825 North Capitol Street N.E., Suite 5100  
Washington D.C. 20002

DISTRICT OF COLUMBIA  
DEPARTMENT OF HEALTH  
Petitioner,

v.

PARKWELL ASSOCIATES  
Respondent

Case Nos.: I-00-70296  
I-00-70325

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**FINAL ORDER**

**I. Introduction**

On July 17, 2001, the Government served a Notice of Infraction (No. 00-70296) upon Respondent Parkwell Associates alleging that it violated 21 DCMR 700.3 by failing properly to containerize solid wastes. The Notice of Infraction alleged that the violation occurred at 3500 13<sup>th</sup> Street, N.W. on July 16, 2001 and sought a fine of \$1,000.

Respondent did not file an answer to the Notice of Infraction within the required twenty days after service (fifteen days plus five additional days for service by mail pursuant to D.C. Official Code §§ 2-1802.02 (e), 2-1802.05). Accordingly, on August 17, 2001, this administrative court issued an order finding Respondent in default, assessing the statutory penalty of \$1,000 authorized by D.C. Official Code § 2-1801.04 (a)(2)(A), and requiring the Government to serve a second Notice of Infraction.

The Government served the second Notice of Infraction (No. 00-70325) on August 22, 2001. On August 23, 2001, Respondent filed a letter, apparently in response to the August 17

order, alleging that it did not receive the first Notice of Infraction and that it “challenge[d] the citation.” Pursuant to D.C. Official Code § 2-1802.02(b), Respondent’s letter was considered as a plea of Deny to the infraction.

I held an evidentiary hearing on January 8, 2002.<sup>1</sup> Gerard Brown, the inspector who issued the Notice of Infraction, appeared on behalf of the Government. There was no appearance for Respondent. Pursuant to D.C. Official Code § 2-1802.03 (b), I proceeded with the hearing in Respondent’s absence.

Based upon the testimony of the Government’s witness, my evaluation of his credibility, the documents admitted into evidence<sup>2</sup> and the entire record in this matter, I now make the following findings of fact and conclusions of law.

## **II. Findings of Fact**

Respondent Parkwell Associates owns an apartment building at 3500 13<sup>th</sup> Street, N.W. On July 16, 2001, Mr. Brown observed two dumpsters behind that building. Both dumpsters had their tops open and were overflowing with trash. The ground in the vicinity of the dumpsters was littered with trash. There were numerous plastic trash bags both on the ground and in the

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<sup>1</sup> The hearing in this case originally was scheduled for October 30, 2001. I dismissed the case when neither the Government nor Respondent appeared for the scheduled hearing. By order dated November 21, 2001, I granted the Government’s unopposed motion for reconsideration of the dismissal order on the ground that the inspector was unaware of the hearing date due to a computer failure within the Department of Health. That order set the new hearing date for January 9, 2002. On December 11, 2001, the Clerk issued an order moving the hearing to January 8, due to a scheduling conflict.

<sup>2</sup> At the hearing, I admitted Petitioner’s Exhibits (“PX”) 100 to 102 into evidence. I also left the record open to permit the Government to file a copy of a District of Columbia property tax record showing the ownership of the property at issue. The Government subsequently filed such a document, which has been marked as PX 103 and is hereby admitted into evidence.

dumpsters. Those bags were easily accessible to rodents, which could rip the bags open to obtain the food wastes contained inside.

On July 17, 2001, Mr. Brown sent the first Notice of Infraction by first class mail to Respondent, as attested to by the signed certificate of service. The address used – P.O. Box 60661, Washington, D.C. 20039 – is the mailing address for Respondent listed in the District of Columbia property tax records. The U.S. Postal Service has not returned that mailing to the Department of Health. Respondent has filed an unsworn letter stating that it never received the first Notice of Infraction, but it did not appear at the hearing and introduced no evidence of the reasons for its failure to file a timely answer to that Notice of Infraction.

### **III. Conclusions of Law**

The regulation at issue provides:

All solid wastes shall be stored and containerized for collection in a manner that will not provide food, harborage, or breeding places for insects or rodents, or create a nuisance or fire hazard.

21 DCMR 700.3.

Respondent's storage of wastes in open dumpsters and on the ground violated this regulation because rats easily could obtain access to food items in the plastic bags. Violation of § 700.3 is a Class 1 civil infraction, punishable by a fine of \$1,000 for a first offense. 16 DCMR 3216.1 (b).

Because the first Notice of Infraction was mailed to Respondent and has not been returned by the Postal Service, service of that notice was proper pursuant to both the Due Process Clause and the Civil Infractions Act, D.C. Official Code §§ 2-1802.01 and 2-1802.05.

*Dusenbery v. United States*, No. 00-6657, slip op. at 7-12 (U.S. January 8, 2002); *Mennonite Board of Missions v. Adams*, 462 U.S. 791, 800 (1983); *McCaskill v. District of Columbia Dep't of Employment Servs.*, 572 A.2d 443, 445 (D.C. 1990); *Carroll v. District of Columbia Dep't of Employment Servs.*, 487 A.2d 622, 624 (D.C. 1985).

The Civil Infractions Act, D.C. Code Official Code §§ 2-1802.02(f) and 2-1802.05, requires the recipient of a Notice of Infraction to demonstrate “good cause” for failing to answer it within twenty days of the date of service by mail. If a party can not make such a showing, the statute requires that a penalty equal to the amount of the proposed fine must be imposed. D.C. Official Code §§ 2-1801.04(a)(2)(A) and 2-1802.02(f). Respondent’s failure to introduce evidence of the reason for its failure to answer the Notice of Infraction means that the statutorily-required penalty of \$1,000 must be imposed in addition to the fine of \$1,000.

#### **IV. Order**

Based upon the foregoing findings of fact and conclusions of law, it is, this \_\_\_\_\_ day of \_\_\_\_\_, 2002:

**ORDERED**, that Respondent shall pay a total of **TWO THOUSAND DOLLARS (\$2,000)** in accordance with the attached instructions within twenty (20) calendar days of the date of service of this Order (15 days plus 5 days service time pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

**ORDERED**, that if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, interest shall accrue on the unpaid amount at

the rate of 1 ½% per month or portion thereof, starting from the date of this Order, pursuant to D.C. Code Official Code § 2-1802.03 (i)(1); and it is further

**ORDERED**, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real and personal property owned by Respondent pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondent's business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

/s/      **1/10/02**

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John P. Dean  
Administrative Judge